

August 28, 2017

VIA ELECTRONIC SUBMISSION

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street SW  
Washington, D.C., 20554

**Re: Comments on Second Notice of Inquiry, In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls, CG Docket No. 17–59.**

The Electronic Transactions Association (“ETA”) respectfully submits these comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Second Notice of Inquiry (“*Second NOI*”) in the above-referenced proceeding.

**Introduction**

ETA is the leading trade association for the payments industry, representing over 500 companies worldwide involved in electronic transaction processing products and services. ETA’s membership spans the breadth of the payments industry to include independent sales organizations, payments networks, financial institutions, transaction processors, mobile payments products and services, payments technologies, software providers, and hardware suppliers. ETA member companies touch, enrich and improve the lives of every consumer by making the global flow of commerce possible.

ETA continues to applaud and support the Commission’s efforts to combat illegal robocalls through this proceeding. ETA understands and agrees that robocalls from fraudulent sources are a nuisance, or even worse, predatory, for many consumers, and efforts to detect and eliminate these calls are important for consumer protection. Equally as important, consumers expect and have a right to demand that their personal financial information is protected by the businesses with which they have relationships. This includes an open, clear, and trusted communication channel to alert consumers to information regarding the security of their account. As ETA pointed out in its June 30 and July 6, 2017 comments, efforts to combat illegal robocalls must take into account the difference between calls from a merchant attempting to sell a product or service to a potential customer and purely informational calls and other communications between businesses and their existing customers. Indeed, ETA’s member companies must be permitted to contact their customers efficiently and quickly in order to provide them with important and vital information about their accounts.

In the *Second NOI*, the Commission seeks comment on a potential reassigned number database for entities that use pre-recorded and artificial voice technology. ETA appreciates that the intent of such a database would be to provide callers with a purportedly more reliable means to ascertain

whether a phone number has been reassigned and, in theory, therefore decrease the amount of pre-recorded calls made to consumers who have not provided prior consent. This concept is valuable and use of a database could show some benefits to callers, however, ETA sees problems with such a proposal.

ETA acknowledges the FCC's request for comments to the *Second NOI* to be specific to the questions asked in the proceeding, and the position of the FCC to refrain from commenting on matters under consideration by federal courts. With this in mind, it is important to note that issues surrounding a reassigned numbers database, including the purpose, incentives for use and participation, and liability, are closely tied to issues surrounding the Telephone Consumer Protection Act ("TCPA") that are currently under consideration by the D.C. Circuit Court.

### **The Potential Problems with the Envisioned Database**

As history has shown, companies that are operating in intentional violation of the TCPA or with willful blindness to its restrictions are unlikely to utilize any reassigned number database or take any material steps to comply with the law. Even if a database is created, these companies will continue business as usual, and it is highly unlikely that consumers will see any reduction in the number of unwanted pre-recorded, autodialed, and artificial voice calls from such entities.

Relatedly, the reassigned number database envisioned by the *Second NOI* will actually require the callers that are operating in good faith and attempting to comply with the TCPA to fund, at least in part, the creation and maintenance of, and ongoing access to, such a database. The companies that are acting in good faith should not be required to finance a database and endure the additional layers of administrative compliance that would be created by the proposed framework in the *Second NOI*.

Moreover, with respect to those companies that must provide important and vital account information to their customers expeditiously – like ETA's members – the database would likely be ineffective in several instances. As noted in ETA's previous comments, ETA's member companies utilize real-time communications tools that empower their customers to instantly identify fraudulent transactions via their mobile device, a critical step to help curtail the multi-billion-dollar annual fraud activity in the U.S. Realistically, however, there will be some amount of lag time between when a number is reassigned and when the database envisioned by the *Second NOI* is actually updated, as the experience with the National Do-Not-Call Registry confirms. During this administrative lag, it is highly likely that ETA members will need to contact certain customers on phone numbers they initially provided but then subsequently reassigned without notifying the members. The member company's querying of the envisioned database before the call is made will not alert the member company that the number has, in fact, been reassigned. In this regard, the database does not provide any assistance or value to ETA member companies, who are acting in good faith to contact the person whom they reasonably believe is their customer on the number provided to them by that customer.

Further, the incentives to comply with the TCPA that the Commission believes would be created by a reassigned number database already exist, as ETA member companies are already only seeking to contact the intended party, and once they learn they have reached the wrong person, they stop calling. This practice will not change with the creation of a reassigned number database.

Finally, the creation and maintenance of a reassigned number database as well as the process to access it will be a complex, expensive, and lengthy undertaking, while the industry and consumers are deserving of an immediate solution.

### **Proposed Alternatives**

Given the potential issues with the database proposed in the *Second NOI*, ETA believes that the Commission should consider market-based solutions and internal scrubbing by companies as a way to demonstrate compliance with the TCPA. Indeed, as the Commission notes in the *Second NOI*, an increasing number of market-based solutions are becoming available to help good-faith callers further comply with the TCPA and the Commission's rulings on liability for calling reassigned numbers. ETA believes that the Commission should establish a safe harbor of compliance with the TCPA for callers who use these solutions in good faith but who, nonetheless, unknowingly initiate a pre-recorded, auto-dialed, or artificial voice call to a reassigned number without knowledge of the reassignment. Such a safe harbor would likely achieve the goal of reducing calls to reassigned numbers without the expense and administrative burdens that would be incurred through a Commission-created reassigned number database.

Further, as the Commission notes, it is possible that the pending decision from the D.C. Circuit could impact any approach taken on reassigned numbers, and it is an unassailable reality that a holistic fix is preferable to one that is piecemeal. Alternatively, the Commission should request that the North American Numbering Council (NANC) – the Commission's advisory committee of telephone number experts – evaluate and provide recommendations on the scope, feasibility, costs, and benefits of a new database solution.

To the extent that the Commission ultimately determines to explore rules creating a reassigned number database, then ETA strongly supports the adoption of a safe harbor to protect callers acting in good faith to comply with the TCPA and who rely upon the database. Indeed, ETA recommends that the safe harbor permit a good faith caller the opportunity to show compliance at the pleading stage in private litigation in order to achieve early dismissal of claims that lack merit.

Further, if a safe harbor is adopted, it would only make sense that callers should demonstrate their attempt to comply with the TCPA by following the guidance of whatever reporting requirement the FCC adopts.

Again, ETA applauds and supports the Commission's interest in and pursuit of solutions to combat illegal robocalls. We look forward to working together with the Commission and other stakeholders to find reasonable solutions to achieve this important consumer protection.

Respectfully submitted,



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